

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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WILLIAM J. MALLEN and  
STEVEN H. MALLEN,

Plaintiffs,

v.

CITY OF BOSTON/BOSTON  
PUBLIC SCHOOLS and  
ANTHONY POMELLA,

Defendants.

Civil Action No.: 05cv10243 RGS

**DEFENDANTS' MOTION TO DISMISS**  
**PLAINTIFFS' COMPLAINT**

The Defendants, the City of Boston/Boston Public Schools and Anthony Pomella, move this Honorable Court, pursuant to F.R.C.P. 12(b)(1) and 12(b)(6), to dismiss with prejudice Plaintiffs' Complaint for lack of subject matter jurisdiction and for failure to state a cause of action upon which relief can be granted. In support of this Motion, Defendants submit a Memorandum of Law in Support of this Motion to Dismiss which is enclosed herewith and incorporated herein.

WHEREFORE, Defendants respectfully request that this Honorable Court dismiss with Prejudice Plaintiffs' Complaint for lack of subject matter jurisdiction and for failure to state a cause of action, and grant such further relief deemed just and proper.

**REQUEST FOR ORAL ARGUMENT**

Defendants request oral argument on the issues contained within this Motion to assist the Court.

Date: March 1, 2005

Respectfully Submitted,  
Defendants,  
By Their Attorney,  
Merita Hopkins, Corporation Counsel

By: /s/ Alissa Ocasio  
Alissa Ocasio, BBO# 645272  
Assistant Corporation Counsel  
Boston Public Schools  
Office of Legal Advisor  
26 Court Street, 7<sup>th</sup> Floor  
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**CERTIFICATE OF SERVICE**

I, Alissa Ocasio, hereby certify that a true copy of this document was served upon Attorney for Plaintiffs, James F. Champa, Esq., One McKinley Square, 6<sup>th</sup> FL, Boston, MA 02109 via electronic filing on March 1, 2005 and via U.S. mail on March 2, 2005.

/s/ Alissa Ocasio